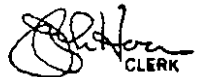


UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA

**FILED**  
APR 30 2009  
  
CLERK

SOUTHERN DIVISION

\*\*\*\*\*

CHRISTOPHER JAMES SPRAW,	*	CIV 08-4070	CIV 08-4096
HARRY T. NUCHOLS,	*	CIV 08-4099	CIV 08-4107
CLIFTON DALE CONVERSE,	*	CIV 08-4108	CIV 08-4118
GEORGE B. COEN,	*	CIV 08-4149	CIV08-4153
JAMES A. PLINE, RAMON GUEL, JR.,	*	CIV 09-4002	
GREG M. DARLING,	*		
HORACE HUBERT SMALL, JR.,	*		
and JOSHUA E. BIGLEY,	*	MEMORANDUM OPINION AND	
Petitioners,	*	ORDER DISMISSING ACTION	
	*		

-VS-

ARCHIE LONGLEY, Warden,	*
Yankton Federal Prison Camp,	*
	*
Respondent.	*
	*

\*\*\*\*\*

The Petitioners in this consolidated action filed petitions pursuant to 28 U.S.C § 2241 which relied on *Arrington v. Daniels*, 516 F.3d 1106 (9th Cir.2008), in asserting that the Bureau of Prisons (BOP) has violated the Administrative Procedure Act by categorically excluding from early release for the successful completion of a residential substance abuse program, prisoners such as themselves, who have been convicted of offenses involving the possession, carrying, or use of firearms. The *Arrington* decision holds that the BOP has failed to set forth a valid rationale for its categorical exclusion rule and that Section 706 of the Administrative Procedure Act requires that the BOP set forth such a rationale.

On December 16, 2008, this Court entered an Order staying this consolidated action. Doc. 34. The basis of the Order staying the consolidated action was that the case of *Kenneth Gatewood v. T.C. Outlaw*, #08-2197, was pending on appeal before the Eighth Circuit Court of Appeals. The BOP had received a favorable ruling in the United States District Court for the Eastern District of Arkansas on the same issue as is presented in the consolidated action before this Court. See *Gatewood v. Outlaw*, 2008 WL 2002650 (E.D. Ark. May 8, 2008). This Court observed that the

appellate decision which would be handed down in the *Gatewood* case would be binding on this Court in the consolidated action at hand.

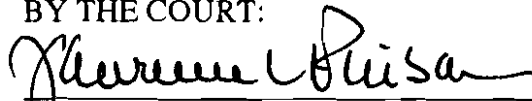
In *Gatewood v. Outlaw*, 560 F.3d 843 (8th Cir. 2009), the Eighth Circuit affirmed the United States District Court for the Eastern District of Arkansas. The Eighth Circuit held that the Bureau of Prisons regulation precluding prisoners convicted of firearm offenses from receiving sentence reduction for the successful completion of residential drug abuse program was not arbitrary and capricious. In so holding, the Eighth Circuit joined a large number of courts which have declined to follow the holding in *Arrington v. Daniels*, 516 F.3d 1106 (9th Cir.2008). See *Hicks v. Federal Bureau of Prisons*, --- F.Supp.2d ----, 2009 WL 689057 (D.S.C. Mar 16, 2009); *Huerta v. Berkebile*, 2009 WL 230163 (N.D.Tex. Jan 30, 2009); *Ortiz v. Owens*, 2009 WL 62203 (D.S.C. Jan 09, 2009); *Muolo v. Quintana*, 593 F.Supp.2d 776 (W.D.Pa. Jan 08, 2009); *Snipe v. Dept. of Justice*, 2008 WL 5412868 (N.D.W.Va. Dec 23, 2008); *Baxter v. Quintana*, 2008 WL 5115046 (W.D.Pa. Dec 04, 2008); *Minotti v. Whitehead*, 584 F.Supp.2d 750 (D.Md. Oct 31, 2008).

On March 27, 2009, Respondent filed and served a Notice of Decision regarding *Gatewood v. Outlaw*, 560 F.3d 843 (8th Cir. 2009), and a Motion to Dismiss based on the holding of that decision. Doc. 39. None of the Petitioners have responded to the Motion to Dismiss. Based on the Eighth Circuit's holding in this matter, the Motion to Dismiss is granted. Accordingly,

IT IS ORDERED that the above-entitled consolidated action is dismissed with prejudice.

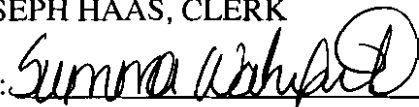
Dated this 29<sup>th</sup> day of April, 2009.

BY THE COURT:



Lawrence L. Piersol  
United States District Judge

ATTEST:  
JOSEPH HAAS, CLERK

BY:   
(SEAL) DEPUTY